

U.S. Pat. App. Ser. No. 10/538,259
Attorney Docket No. 10191/3700
Replacement Amendment to Office Action of September 15, 2006

Amendments to the DRAWINGS:

The Drawing of Figure 1 was objected to because it was not labeled “Prior Art”. Accordingly, accompanying this Amendment is a Replacements Sheet for Figure 1, which is now labeled “Prior Art”, as suggested. No New matter has been added and the text is supported by the present application. Approval and entry are respectfully requested.

REMARKS

Claims 8 to 19 are now pending.

Applicants respectfully request reconsideration of the present application in view of this response.

With respect to paragraph twelve (12) of the Office Action, Applicants thank the Examiner for indicating that claims 18 and 19 include allowable subject matter. While the objections may not be agreed with, to facilitate matters, claim 9 (as well as claim 8) has been rewritten to better clarify or define the subject matter. Accordingly, the objections are traversed as to claims 18 and 19, since their base claim 9 (as well as claim 8) is allowable as explained below. Withdrawal of the objections is therefore respectfully requested.

With respect to paragraph three-a (3a), the Abstract has been amended, without prejudice, as suggested. Approval and entry are respectfully requested. It is therefore respectfully requested that the objection be withdrawn.

With respect to paragraph three-b (3b), the paragraph beginning at line Specification at page 3, line 19 (and ending at page 4, line 33) of the Substitute Specification has been amended without prejudice. Approval and entry are respectfully requested. It is therefore respectfully requested that the objection be withdrawn.

With respect to paragraph four (4), the Drawing of Figure 1 was objected to because it was not labeled "Prior Art". Accordingly, accompanying this Amendment is a Replacements Sheet for Figure 1, which is now labeled "Prior Art", as suggested. No New matter has been added and the text is supported by the present application. Approval and entry are respectfully requested. It is therefore respectfully requested that the objection be withdrawn.

With respect to paragraph six (6) of the Office Action, claims 8 to 19 were rejected under the first paragraph of 35 U.S.C. § 112 as to enablement.

While the rejections may not be agreed with, to facilitate matters, claims 8 and 9 have been rewritten to better clarify or define the subject matter. Approval and entry are respectfully requested, as is withdrawal of the enablement rejections.

Claims 8 and 9 were rejected under 35 U.S.C. § 102(b) as anticipated by Sarangapani, U.S. Patent No. 6,055,042.

As regards the anticipation rejections of the claims, to reject a claim under 35 U.S.C. § 102, the Office must demonstrate that each and every claim feature is identically described or contained in a single prior art reference. (See Scripps Clinic & Research Foundation v.

Genentech, Inc., 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). As explained herein, it is respectfully submitted that the prior Office Action does not meet this standard, for example, as to all of the features of the claims. Still further, not only must each of the claim features be identically described, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed subject matter. (See *Akzo, N.V. v. U.S.I.T.C.*, 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986)).

As further regards the anticipation rejections, to the extent that the Office Action may be relying on the inherency doctrine, it is respectfully submitted that to rely on inherency, the Examiner must provide a “basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics *necessarily* flows from the teachings of the applied art.” (See M.P.E.P. § 2112; emphasis in original; and *see Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int'l. 1990)). Thus, the M.P.E.P. and the case law make clear that simply because a certain result or characteristic may occur in the prior art does not establish the inherency of that result or characteristic.

As explained above, while the rejections may not be agreed with, to facilitate matters, claims 8 and 9 have been rewritten to provide that relevance is determined from three sensors.

As to the “Sarangapani” reference, Figure 4 only indicates that sensor equipment includes a two near field sensors and one far field sensor. This arrangement wholly differs from the presently claimed subject matter since the sensing range of the two near field sensors do not overlap, as provided for in the context of the presently claimed subject matter of claims 8 and 9, as presented, in which there is substantial overlap (claim 8) or coincidence (claim 9). According to Figure 8, an object is detected using weighted sensor signals, and is done as a function of external parameters (col. 6, lines 11 to 13), but it does not identically disclose (or even suggest) the determining of a relevant target if all three sensors detect the object, as provided for in the context of claims 8 and 9, as presented.

Accordingly, these claims and the dependent claims 10 to 19 are allowable.

Accordingly, as presented, claims 8 to 19 are allowable. It is therefore respectfully requested that the anticipation rejections be withdrawn.

With respect to paragraph ten (10), claim 10 was rejected under 35 U.S.C. § 103(a) as unpatentable over the “Sarangapani” reference in view of Paradie, U.S. Patent No. 6,664,918.

In rejecting a claim under 35 U.S.C. § 103(a), the Examiner bears the initial burden of presenting a *prima facie* case of obviousness. In re Rijckaert, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. In re Fine, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. In re Vaeck, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). Second, there must be a reasonable expectation of success. In re Merck & Co., Inc., 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. In re Royka, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

Claim 10 depends from claim 9, as presented, and is therefore allowable for the same reasons as claim 9 as presented since the secondary “Paradie” reference does not cure the critical deficiencies of the principal reference.

With respect to paragraph eleven (11), claims 11 to 17 were rejected under 35 U.S.C. § 103(a) as unpatentable over the “Sarangapani” reference as applied to claim 9 in view of Andersson et al., U.S. Patent No. 6,853,908.

Claims 11 to 17 depend from claim 9, as presented, and are therefore allowable for the same reasons as claim 9 as presented since the secondary “Andersson” reference does not cure the critical deficiencies of the principal reference.

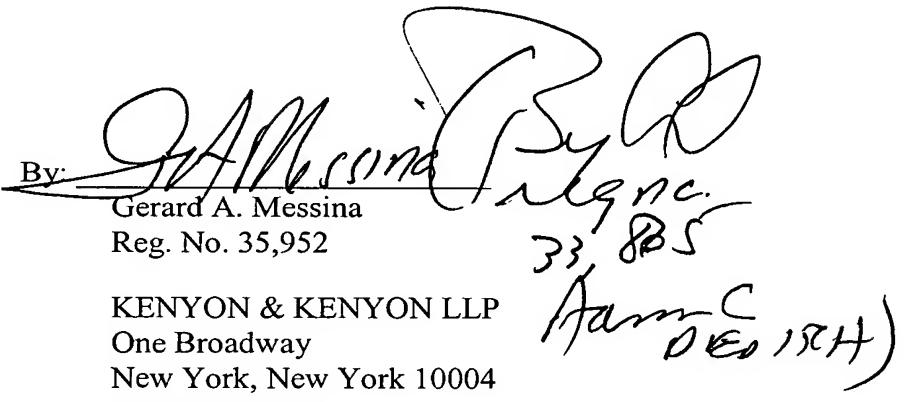
Accordingly, claims 8 to 19 are allowable.

Conclusion

It is therefore respectfully submitted that all of claims 8 to 19 are allowable. It is therefore respectfully requested that the objections and rejections be withdrawn, since all issues raised have been addressed and obviated. An early and favorable action on the merits is therefore respectfully requested.

Respectfully submitted,

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